

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Residential Building  
Contractor's License of Stylistic Home  
Improvements

**RECOMMENDATION FOR  
SUMMARY DISPOSITION**

This matter comes before Administrative Law Judge Raymond R. Krause on the Department of Labor and Industry's Motion for Summary Disposition. The Department filed its Motion with the Office of Administrative Hearings on October 3, 2006. Respondent filed its Memorandum in Opposition to the Department's Motion on October 10, 2006. Argument on the Motion was heard on October 17, 2006 at the offices of the Office of Administrative Hearings, 100 Washington Avenue, Suite 1700, Minneapolis, MN 55401.

Christopher M. Kaisershot, Assistant Attorney General, NCL Tower, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Labor and Industry (the Department). Michael P. Haag, Attorney at Law, Henningson & Snoxell, Ltd., 6900 Wedgwood Road, Suite 200, Maple Grove, MN 55311-3541, appeared on behalf of John Flaga Jr., owner and qualifying person for the license application of Respondent, Sylistic Home Improvements, LLC.

Based upon all of the filings in this case and for the reasons set out in the accompanying Memorandum:

IT IS RECOMMENDED that the Commissioner of Labor and Industry grant the Department's Motion for Summary Disposition.

Dated this 20th day of October 2006.

s/Raymond R. Krause

---

RAYMOND R. KRAUSE  
Chief Administrative Law Judge

Reported: Taped

## **NOTICE**

This Report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Recommendation for Summary Disposition. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Deputy Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62 subd.2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **MEMORANDUM**

### **Factual Background**

On May 22, 2006, Respondent submitted an application for licensure as a residential building contractor with the Department. In the application, it was noted that John Flaga, Jr. (Flaga), was its owner, manager, and qualifying person.<sup>1</sup>

On June 15, 2006, the Department notified Respondent that it recommended the denial of its license application.<sup>2</sup>

On July 7, 2006, Respondent requested a hearing to contest the Department's recommended decision.<sup>3</sup>

A prehearing conference was held on this matter on September 20, 2006. At the prehearing conference, Respondent stipulated that "the Department had

---

<sup>1</sup> Notice of and Order for Hearing, Order to Show Cause pg. 2.

<sup>2</sup> Id. pg. 3.

<sup>3</sup> Id.

sufficient discretion pursuant to Minn. Stat. § 45.027, subd. 7 (2004) to deny Respondent's application."<sup>4</sup>

Respondent does not contest that Flaga has a criminal history. Specifically, Respondent does not contest that on August 19, 1996, Flaga pleaded guilty to four counts of felony bail jumping and was sentenced to two years in prison and a fine by the Kenosha (Wisconsin) County Circuit Court.<sup>5</sup>

### **Legal Standard for Summary Disposition**

Summary disposition is the administrative equivalent to summary judgment.<sup>6</sup> Summary judgment is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.<sup>7</sup> A genuine issue is one that is not a sham or frivolous, and a material fact is one which will affect the outcome of the case. The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.<sup>8</sup>

The moving party must demonstrate that no genuine issues of material fact exist.<sup>9</sup> If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts are in dispute that can affect the outcome of the case.<sup>10</sup> It is not sufficient for the nonmoving party to rest on mere averments or denials; it must present specific facts demonstrating a genuine issue for trial.<sup>11</sup> When considering a motion for summary judgment, the Judge must view the facts in the light most favorable to the non-moving party.<sup>12</sup> All doubts and factual inferences must be resolved against the moving party.<sup>13</sup> If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.<sup>14</sup>

### **Consideration of Evidence of Rehabilitation Under Chapter 364**

Respondent does not deny that the Department would be within its discretion to deny the license application in this case, based upon the conduct underlying the conviction for felony bail jumping. Respondent, however, argues

---

<sup>4</sup> Respondent's Memorandum, pg. 1.

<sup>5</sup> Id. and Tape.

<sup>6</sup> Minn. R. 5500(K) (2002)

<sup>7</sup> Minn. R. Civ. P. 56.03

<sup>8</sup> Minn. R. 1400.6600.

<sup>9</sup> *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

<sup>10</sup> *Highland Chateau*, 356 N.W.2d at 808.

<sup>11</sup> Minn. R. Civ. P. 56.05.

<sup>12</sup> *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984).

<sup>13</sup> *Theile v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

<sup>14</sup> *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 250-51 (1986).

that Chapter 364 requires the Department to consider evidence of rehabilitation before denying the application on the basis of a prior conviction.

The Department points to Minn. Stat. § 45.027, subd. 10, which states in relevant part, “Chapter 364 does not apply to an applicant for a license... where the underlying conduct on which the conviction is based would be grounds for denial...of the license.” The Department’s position is that the language of Minn. Stat. § 45.027, subd. 10 is clear and because Respondent has stipulated to the convictions and to the Department’s discretion to deny the application based on those convictions, there are no facts in dispute and the matter must be summarily disposed of as a matter of law.

Minn. Stat. § 45.027, subd. 10 is not as broad a provision as the Department argues in its motion. There must be, as Respondent argues, some analysis made to show that the conduct is such that the Department would have the discretion to deny the application on that basis. Not all conduct resulting in a conviction is of a nature that would give reasonable grounds for the Department to deny an application. It is, in other words, insufficient to merely point out that an applicant has been convicted of a crime. There must be a showing that the conduct underlying the conviction relates to the statutory bases upon which the Department has authority to deny licenses.

The statutory basis for denial of an application of this type is found in Minn. Stat. § 45.027, subd. 7(a), (1) – (4). It states that an application may be denied, inter alia, if “the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed... which demonstrates that the applicant... is untrustworthy.”

The conduct underlying a conviction for felony bail jumping involves the posting of a bond and, by failing to appear in court as promised, forfeiting the bond. This conduct implies untrustworthiness. Although the Department is not required to show that the conduct is directly related to the residential building contractor business, it is, in fact, related as contractors are, from time to time, required to post bonds and are expected to fulfill the conditions of those bonds.

The motion asks this ALJ to dispose of this matter on the basis that the stipulated conduct is sufficient to deny the license and, therefore, under Minn. Stat. § 45.027 sub. 10, the evidence of rehabilitation is inapplicable to this case.

There are no facts in dispute, the Respondent stipulates to the conduct alleged and that the Department has the discretion to deny the license on those grounds. That conduct, when subjected to the analysis of Minn. Stat. § 45.027 subd. 7(a) is conduct which demonstrates untrustworthiness and is, therefore, sufficient grounds upon which to deny the license. Therefore, Chap. 364 does not apply to this case and the motion is granted.

R.R.K.